

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF PENNSYLVANIA

FILED  
SCRANTON

JAN 18 2001

MARIO LENARDO CRADLE  
Petitioner,

PER cd  
DEPUTY CLERK

-vs.

Case No.

**3: CV 01-0117**

UNITED STATES OF AMERICA, EX. REL;  
JONATHAN C. MINER, WARDEN, ALLENWOOD  
FEDERAL PRISON CAMP, MONTGOMERY,  
PENNSYLVANIA,  
Respondent.

FILED  
SCRANTON

JAN 18 2001

PER Bjh  
DEPUTY CLERK

PETITION FOR WRIT OF HABEAS CORPUS  
BY A PERSON IN FEDERAL CUSTODY

Petitioner, MARIO LENARDO CRADLE, appearing pro se,  
under the authority of 28 U.S.C. §2241 and FRCP 81 a(2),  
respectfully states as follows:

1. Petitioner is restrained of liberty at Allenwood  
Federal Prison Camp, Montgomery, Pennsylvania.

2. Petitioner is unlawfully imprisoned, restrained  
of liberty and in the custody of respondent, Jonathan C.  
Miner, Warden of the Allenwood Federal Prison Camp at  
Montgomery, Pennsylvania, County of Lycoming, State of  
Pennsylvania, in violation of the laws and Constitution  
of the United States.

3. Respondent has custody of petitioner by virtue of the judgment and sentence of the United States District Court for the Western District of North Carolina-Statesville Division, United States v. Mario Lenardo Cradle, ST-CR-90-17-1; copies of the judgment and sentencing are attached hereto and made a part hereof and marked Exhibit "A" and "B" respectively. Petitioner entered a plea of guilty to Count One [Conspiracy to Manufacture and Possess With Intent to Distribute in Excess of 50 Grams of Cocaine Base]; Count Two [Manufacturing in Excess of 50 Grams of Cocaine Base]; Count Three [Possessing With Intent to Distribute in Excess of 50 Grams of Cocaine Base]; and Aiding and Abetting, all in violation of 21 U.S.C. §§841 (a)(1) and 846.

4. Petitioner did not appeal his conviction and sentence to the Fourth Circuit Court of Appeals.

5. Petitioner did not collaterally attack his convictions and sentences by filing a motion pursuant to 28 U.S.C. §2255.

6. Petitioner has failed to adhere to the one year limitation period, as provided for under 28 U.S.C. §2255, as amended, April 24, 1996. Petitioner's application for writ of Habeas Corpus pursuant to 28 U.S.C. §2241 is the proper avenue to raise his claim, because under the language of §2255, petitioner is barred from presenting his claim for relief and , accordingly §2255 is inadequate or ineffective

to test the legality of Mr. Cradles' petition. Further, petitioner's only challenge is to the legality of his sentence and the jurisdiction of the sentencing court to impose the enhanced penalty.

7. Petitioner made application to the United States Court of Appeals for the Fourth Circuit requesting that Court review the sentences imposed and the jurisdiction of the sentencing court to impose the enhanced penalty. That Court declined to accept jurisdiction of petitioner's request for review. Exhibit "C" describes the situation. [Exhibit "C" attached hereto].

8. The question petitioner presents is whether the sentencing court was ultra vires to impose the statutory enhancement of 10 years in the absence of the government complying with the notice requirements of 21 U.S.C. §851(c). Section 851(c) is a statutorily mandated jurisdictional requirement, which is non-waivable.

9. The failure of the government to place petitioner on notice of its intent to seek an enhanced penalty, as provided for under 21 U.S.C. §851(c) violates petitioner's right to due process, and as such petitioner is now serving an illegal sentence.

10. Petitioner urges that he can properly raise the jurisdictional issue presented in the within petition under the provisions of Rule 12(b)(2) of the Federal Rules of

Criminal Procedure.

11. Petitioner urges this Court to accept jurisdiction over this petition, as the facts alleged herein constitute probable cause for belief that petitioner is being detained without lawful authority.

12. Petitioner is unlawfully imprisoned, and restrained of liberty, and in the unlawful custody of Jonathan C. Miner, Warden, Allenwood Federal Prison Camp, Lycoming County, Montgomery, Pennsylvania, in that the 10 year enhanced penalty imposed by the sentencing court was contrary to law by the government's failure to comply with the notice requirements of 21 U.S.C. §851(c), and as such, the sentencing court was ultra vires to impose such an enhancement. Petitioner has served 120 months of his sentence; said sentence absent the enhanced 10 year penalty, would not have exceeded 102 months, and would not have approached the 240 months imposed by the sentencing court. Petitioner is now serving an illegal sentence.

BRIEF HISTORY

13. On or about April 30, 1990, petitioner was arrested by Hickory, North Carolina police, acting in concert with federal authorities.

14. On June 6, 1990, a Western District of North Carolina Grand Jury returned a Three Count Indictment against petitioner. Count One charged that on or about April 30, 1990, the

defendant did conspire with others to manufacture and possess with intent to distribute in excess of 50 grams of cocaine base, in violation of Title 21 U.S.C. section 846. Count Two charged that on April 30, 1990, the defendant did manufacture and aid and abet others in the manufacturing of in excess of 50 grams of cocaine base, in violation of Title 21 U.S.C. Section 841(a)(1); Title 18 U.S.C. Section 2. Count Three charged that on April 30, 1990, the defendant did possess with intent to distribute and aid and abet others in the possession with the intent to distribute in excess of 50 grams of cocaine base, in violation of Title 21 U.S.C. Sections 841 (a)(1); Title 18 U.S.C. Section 2.

15. On August 22, 1990, petitioner pursuant to a plea agreement pled guilty to all three counts of the indictment.

16. Petitioner's sentence was enhanced pursuant to the recidivist provision of Title 21 U.S.C. §841(b)(1)(A), which provides for a twenty year mandatory minimum term of imprisonment for a violation of §841(a)(1) after a prior felony drug conviction has become final. Petitioner avers that the prior felony drug conviction became final within five years of the offense of conviction and, as such, the government's failure to file and serve on petitioner its "Notice of Intention to Seek Enhanced Penalty," as required under 21 U.S.C. §851(c) rendered the sentencing court "coram non judice" to impose the enhanced penalty. Under the

current illegal judgment and sentencing, which includes an enhanced penalty of 10 years, or a total term of twenty years, petitioner contends that but for the inclusion of the 10 years enhanced penalty, his confinement could not and would not have exceeded 8.5 years. Under the facts of this case, this petitioner is being illegally detained, as is evidenced by the above-referenced history.

BRIEF IN SUPPORT OF PETITION FOR HABEAS CORPUS

THE SENTENCING COURT DID NOT HAVE  
JURISDICTION TO IMPOSE ENHANCED  
PENALTY, PURSUANT TO TITLE 21  
U.S.C. SECTION 841(b)(1)(A).

On August 22, 1990, petitioner, pursuant to a plea agreement pled guilty to all three counts of the indictment. Prior to petitioner entering a plea of guilty to the charged conduct, the government failed to file and serve on petitioner its Notice of Intention to Seek Enhanced Penalty, pursuant to 21 U.S.C. §851. Section 851 provides in relevant part:

No person who stands convicted of an offense under this part [21U.S.C. § 841 et. seq.] shall be sentenced to increased punishment by reason of one or more prior convictions, unless before trial, or before entry of a plea of guilty, the United States Attorney files an information with the Court (and serves a copy of such information on the person or counsel for the person) stating in writing the previous convictions to be relied upon.

Due Process requires that a defendant receive reasonable notice and an opportunity to be heard regarding the possibility of an enhanced sentence for recidivism. Oyler v. Boles, 368 U.S. 448, 452, 82 S. Ct. 501, 504, 7 L. Ed. 2d 446 (1962). In this regard, section 851 was enacted to fulfill this due process requirement. See United States v. Johnson, 944 F. 2d 396, 407 (8th Cir. 1991)(§851 allows the defendant an opportunity to determine whether to enter a plea or go to trial, and to plan his strategy with full knowledge of the consequences of a potential guilty verdict); United States v. Wright, 932 F. 2d 868, 882 (10th Cir.)(§851 provides the defendant an opportunity to challenge the prior convictions), cert. denied, \_\_\_ U.S. \_\_\_, 112 S. Ct. 428, 116 L. Ed. 2d 448. See also United States v. Allen, 566 F. 2d 1193 (3rd Cir. 1977).

In Section 841, Congress has fixed the statutory sentence, mandating a range of imprisonment of ten years to life for a first offense, and twenty years to life for a repeated violation. In filing an information about the defendant's prior convictions, the government simply alters the range of the final penalty available to the Court by increasing the mandatory minimum sentence. Under the provisions of §851(b), the district court must then inquire of the defendant whether he affirms or denies his prior convictions. If he denies any allegation of the information or challenges the constitutionality of any conviction alleged in the information,

the Court must hold a hearing on the matter. See 21 U.S.C. §851(c). Here the record is silent, as to any information filed by the government, in compliance with the requirements of §851. Accordingly, the enhanced penalty imposed by the sentencing court was contrary to law, and as a result, petitioner is currently being illegally detained.

#### SENTENCING AND TERM OF IMPRISONMENT

In the instant matter, the sentencing court adopted the recommendations of the Probation Office's presentence report, which based its sentencing computation on those factors provided for under 21 U.S.C. §841(b)(1)(A). Copy of the presentence report is attached hereto and made a part hereof and marked Exhibit "D."

Under 21 U.S.C. §841(b)(1)(A), any person convicted of possession with intent to distribute more than 50 grams of cocaine base "shall be sentenced to a term of imprisonment which may not be less than 10 years or more than life." Furthermore, if the defendant "commits such a violation after a prior conviction for a felony drug offense has become final, such person shall be sentenced to a term of imprisonment which may not be less than 20 years and not more than life imprisonment." *Id.* In order for the court to exercise jurisdiction to impose an enhanced sentence based on prior convictions, however, the government must comply with the procedural requirements of 21 U.S.C. §851. An event, to which the government failed to comply with in the instant matter,

A copy of the Court docket sheet is attached hereto and made a part hereof and marked Exhibit "E." See also Defense Counsel letter indicating in essence that no such notification was provided. A copy of defense counsel letter is attached hereto and made a part hereof and marked as Exhibit "F."

In sum, the district court may impose an enhanced sentence only after determining (1) that the government timely filed a proper information, (2) that the government served a copy of the information on the defendant or his counsel, and (3) that the defendant does not contest or failed to contest successfully the conviction in the information. The court may then select a sentence within the parameters set by Congress, ranging from ten years to life if the information is improper, or twenty years to life if it is valid. Accordingly, petitioner's total incarceration time should not have exceeded 102 months. Petitioner has been incarcerated 120 months, and is therefore entitled to immediate release. The petitioner asserts that the sentencing court lacked subject matter jurisdiction with respect to the enhanced penalty. The issue of subject matter jurisdiction may be raised any place and at any time. See Federal Rules of Criminal Procedure 12 (b)(2).

WHEREFORE, Petitioner MARIO LENARDO CRADLE requests this Court to issue a Writ of Habeas Corpus Ad Subjiciendum commanding respondent to produce the body of Petitioner before

this Court, at a time and place to be specified by this Court, so that this Court may further inquire into the lawfulness of Respondent's custody of petitioner, to discharge petitioner from Respondent's custody, and to grant Petitioner such other and further relief to which petitioner may be entitled in this proceeding.

DATED THIS 5 DAY OF NOVEMBER, 2000

Respectfully submitted,

Mario Lenardo Cradle

Mario Lenardo Cradle

#082 53-058

FPC Allenwood

P.O. Box 1000

Montgomery, PA

*Exhibit A*

FILED  
STATESVILLE, N. C.

AO 245 S (3/88) Sheet 1 - Judgment Including Sentence Under the Sentencing Reform Act

## United States District Court

OCT 17 1990

WESTERN

District of

NORTH CAROLINA

U. S. DISTRICT COURT

STATESVILLE DIVISION

WESTERN DISTRICT OF N.C.

UNITED STATES OF AMERICA

V.

JUDGMENT INCLUDING SENTENCE  
UNDER THE SENTENCING REFORM ACT

MARIO LENARDO CRADLE

Case Number

ST-CR-90-17-1

(Name of Defendant)

Roger T. Smith, appointed

Defendant's Attorney

## THE DEFENDANT:

- ☒ pleaded guilty to count(s) 1, 2 & 3
- ☐ was found guilty on count(s) \_\_\_\_\_ after a plea of not guilty.

Accordingly, the defendant is adjudged guilty of such count(s), which involve the following offenses:

	Title & Section	Nature of Offense	Count Number(s)
1:	841(a) (1) 846	Conspiracy to unlawfully manufacture and possess w/intent to distribute in excess of 50 grams of cocaine base, a Sch. II narcotic controlled substance	1
1:	841(a) (1)	Manufacturing in excess of 50 grams of cocaine base, a Sch. II narcotic controlled substance & aiding & abetting	2
3:	2		
1:	841(a) (1)	Possessing w/intent to distribute in excess of 50 grams of cocaine base, a Sch. II narcotic controlled substance & aiding & abetting	3
3:	2		

The defendant is sentenced as provided in pages 2 through 4 of this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

- ☐ The defendant has been found not guilty on count(s) \_\_\_\_\_, and is discharged as to such count(s).
- ☐ Count(s) \_\_\_\_\_ (is)(are) dismissed on the motion of the United States.
- ☐ The mandatory special assessment is included in the portion of this Judgment that imposes a fine.
- ☒ It is ordered that the defendant shall pay to the United States a special assessment of \$ 150.00, which shall be ~~due immediately~~ paid as directed by U. S. Probation Office. Interest waived.

It is further ordered that the defendant shall notify the United States Attorney for this district within 30 days of any change of residence or mailing address until all fines, restitution, costs, and special assessments imposed by this Judgment are fully paid.

Defendant's Soc. Sec. Number:

117-66-5566

Defendant's mailing address:

c/o Buncombe Co. Jail

Asheville, N. C.

Defendant's residence address:

same as above

A True Copy

TESTE:

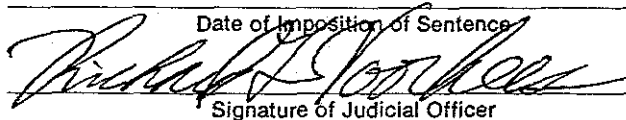
Frank G. Johns, Clerk

By

Deputy Clerk

October 9, 1990

Date of Imposition of Sentence



Signature of Judicial Officer

RICHARD L. VOORHEES, U. S. DISTRICT JUDGE

Name &amp; Title of Judicial Officer

October 9, 1990

Date

AO 245 S (3/88) Sheet 2 - Imprisonment

Defendant: Mario Lenardo Cradle  
 Case Number: ST-CR-90-17-1

Judgment—Page 2 of 4**IMPRISONMENT**

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of TWENTY (20) Years on each of Counts 1, 2 & 3 to run concurrently to each count

☐ The Court makes the following recommendations to the Bureau of Prisons:

☐ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district,

☐ at \_\_\_\_\_ a.m.  
 \_\_\_\_\_ p.m. on \_\_\_\_\_.

☐ as notified by the Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before 2 p.m. on \_\_\_\_\_.

☐ as notified by the United States Marshal.

☐ as notified by the Probation Office.

**RETURN**

I have executed this Judgment as follows:

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

Defendant delivered on \_\_\_\_\_ to \_\_\_\_\_ a  
 \_\_\_\_\_, with a certified copy of this Judgment

United States Marshal

By \_\_\_\_\_  
 Deputy Marshal

Defendant: Mario Lenardo Cradle  
Case Number: ST-CR-90-17-1

### SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of \_\_\_\_\_  
TEN (10) YEARS on each of Counts 1, 2 & 3 to run concurrently to each count

While on supervised release, the defendant shall not commit another Federal, state, or local crime and shall comply with the standard conditions that have been adopted by this court (set forth on the following page). If this judgment imposes a restitution obligation, it shall be a condition of supervised release that the defendant pay any such restitution that remains unpaid at the commencement of the term of supervised release. The defendant shall comply with the following additional conditions:

- ☐ The defendant shall pay any fines that remain unpaid at the commencement of the term of supervised release.
1. Within 72 hours of release from prison defendant to report to the probation office in the district where released.
  2. Not commit any local, state or federal crimes.
  3. Obey standard conditions of supervised release.
  4. Participate in a program of drug and alcohol treatment and testing as directed by probation officer.
  5. Not possess a firearm or other dangerous weapon.

Defendant: Mario Lenardo Cradle  
Case Number: ST-CR-90-17-1

### STANDARD CONDITIONS OF SUPERVISION

While the defendant is on probation or supervised release pursuant to this Judgment:

- 1) The defendant shall not commit another Federal, state or local crime;
- 2) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 3) the defendant shall report to the probation officer as directed by the court or probation officer and shall submit a truthful and complete written report within the first five days of each month;
- 4) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 5) the defendant shall support his or her dependents and meet other family responsibilities;
- 6) the defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 7) the defendant shall notify the probation officer within seventy-two hours of any change in residence or employment;
- 8) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute or administer any narcotic or other controlled substance, or any paraphernalia related to such substances except as prescribed by a physician;
- 9) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed or administered;
- 10) the defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer;
- 11) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer;
- 12) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 13) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court;
- 14) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

These conditions are in addition to any other conditions imposed by this Judgment.

EXHIBIT B

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NORTH CAROLINA  
STATESVILLE DIVISION

2001-9  
U.S. DISTRICT COURT  
STATESVILLE, NC

UNITED STATES OF AMERICA

Plaintiff

VERSUS

MARIO LEONARDO CRADLE, BONNIE  
EUGENE WILLIAMS, JR., PAUL ERIC  
WILSON

Defendants

\*  
\*  
\*  
\* ST-CR-90-17-3  
\*  
\*  
\* SENTENCING  
\*  
\*  
\*  
\*  
\*

TRIAL: HONORABLE RICHARD L. VOORHEES  
TRANSCRIPT: REPORTER'S OFFICIAL TRANSCRIPT  
OF PROCEEDINGS IN ABOVE CAUSE  
LOCATION: UNITED STATES DISTRICT COURTHOUSE  
STATESVILLE, NORTH CAROLINA  
TRIAL DATE: OCTOBER 9, 1990  
TRANSCRIPT FILED: MAILED TO STATESVILLE N.C. 4/2/92  
ORDERED BY: WILLIAM CRADLE, DIST. CLERK & MS. LISA CLINE

BILL HOGAN, RPR  
Official Court Reporter  
United States District Court  
P.O. Box 1632  
Asheville, N.C. 28802  
(704) 252-7294

GOVERNMENT  
EXHIBIT

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THELMA WILLIAMS

DIRECT EXAMINATION,

QUESTIONS BY MR. TUCKER:.....

CROSS EXAMINATION,

QUESTIONS BY MR. BRADFORD .....

WITNESS WILLIAMS EXCUSED:.....

MARGARET MCCLOY

DIRECT EXAMINATION,

QUESTIONS BY MR. TUCKER:.....

WITNESS MCCLOY EXCUSED:.....

PASTOR SARAH BLACKBURN

DIRECT EXAMINATION,

QUESTIONS BY MR. TUCKER:.....

WITNESS BLACKBURN EXCUSED:.....

MONICE GAITHER

DIRECT EXAMINATION,

QUESTIONS BY MR. TUCKER:.....

WITNESS GAITHER EXCUSED:.....

BONNIE WILLIAMS SR.

DIRECT EXAMINATION,

QUESTIONS BY MR. TUCKER:.....

WITNESS B. WILLIAMS EXCUSED:.....

CHRISTINE NICHOL

DIRECT EXAMINATION,

QUESTIONS BY MR. TUCKER:.....

WITNESS NICHOL EXCUSED:.....

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SENTENCES - CRADLE: .....

- WILSON: .....

- WILLIAMS: .....

END OF TRANSCRIPT: .....

1 APPEARANCES:

2 FOR THE PLAINTIFF,  
3 UNITED STATES OF AMERICA:

4 Mr. Bob . . . , AUSA  
5 United States District Courthouse  
6 N.C. 28 01

7 FOR THE DEFENDANT,  
8 MARIO LEONARDO CRADLE:

9 Mr. Roger T. Smith, appt.  
10 PH: (704) 254-4658

11 BONNIE EUGENE WILLIAMS, JR.:

12 Mr. Robert P. Tucker, II, appt.  
13 (704) 252-1248

14 PAUL ERIC WILSON:

15 Mr. Stanley Young, appt.  
16 (704) 255-8569

17 BE IT REMEMBERED that in the United States District  
18 Court for the Western District of North Carolina, Statesville  
19 Division, in the United States Courthouse, in the City of  
20 Statesville, State of North Carolina, on the 9th day of  
21 October, 1990, the above entitled cause came on for hear  
22 before Honorable Richard L. Voorhees, Judge of said Court  
23 and the proceedings of the trial are in the words and figures  
24 following, to-wit:  
25

  
Bill Hogan, Official Court Reporter  
United States District Court

1 (Whereupon the Court reconvened and the following  
2 proceedings were had:)

3 THE COURT: We have three cases before us for  
4 sentencing. Mr. Cradle and Mr. Williams and Mr.  
5 Wilson.

6 Mr. Smith, have you had an adequate opportunity  
7 to go over the pre-sentence report with your client?

8 MR. SMITH: Yes, sir.

9 THE COURT: Are there any objections other than  
10 what you've already set forth?

11 MR. SMITH: I take Your Honor has received my  
12 objections which have been noted by the probation  
13 officer and other than those we have no objections  
14 to the report.

15 The only objections regarding the dates over  
16 there entering of the pleas by the Co-Defendants  
17 and the two point reduction we feel Mr. Cradle is  
18 entitled to because of his admission of respon-  
19 sibility.

20 THE COURT: What says the Government concerning  
21 the adjustments?

22 MR. BRADFORD: Well, Your Honor on this particular  
23 Defendant we agreed for a two point acceptance of  
24 responsibility. However, as the probation officer  
25 has pointed out in his addendum that that would have

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1 absolutely no effect even though he has accepted  
2 responsibility. Because of the prior conviction  
3 the minimum mandatory went up from ten years to twenty  
4 years. And, therefore, cuts off the acceptance of  
5 responsibility. It would appear the only way the  
6 Defendant could ever get any help is if he could  
7 get substantial assistance to the United States by  
8 delivering higher ups in the organization.

9 THE SMITH: I would agree that that--in that  
10 effect as Mr. Bradford has reported. I have offered  
11 and continue to offer to the Government Mr. Cradle's  
12 assistance. I think the Government probably evaluate  
13 to some extent the ability of Mr. Cradle to give  
14 substantial assistance and have their own opinion  
15 about that. But we do offer that to the Government  
16 for whatever purpose outstanding.

17 THE COURT: All right.

18 Well, that would seem to be a moot point as far  
19 as the calculation of the range.

20 MR. SMITH: Yes, sir.

21 THE COURT: Will you be offering any evidence?

22 MR. SMITH: No, sir.

23 THE COURT: All right.

24 Now, then, Mr. Young...

25 MR. YOUNG: Yes, sir.

5

1 THE COURT: Have you and the Defendant had an  
2 opportunity to go over the pre-sentence report?

3 MR. YOUNG: I've reviewed, Your Honor, he informed  
4 me he's reviewed it once before and is reviewing it  
5 again. There--I guess it's just--since there's three  
6 Defendants involved and I understand the probation  
7 officer prepared this from--from records and documents  
8 contained in the file without the benefit of a formal  
9 interview and that paragraph eight it indicates my  
10 client was the one that was running from the car, well  
11 is another Defendant.

12 Other than these areas--can correct in open court  
13 here, Your Honor, we would object to the denial of  
14 two point credit for acceptance of responsibility.

15 The U.S. Attorney may agree that we're entitled  
16 to it. If not, since he wasn't formally interviewed  
17 what I would propose to do to the Court is call my  
18 client and offer evidence so that he may admit and  
19 then argue Your Honor should entitle us to that  
20 two points.

21 THE COURT: What says the Government?

22 MR. BRADFORD: Your Honor, Defendants have pleaded  
23 guilty. They have signed full cooperation agreements.  
24 They agreed to cooperate with the United States. I  
25 know of nothing which would go against that. But I

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6

1 can't say that they have been interviewed by anybody  
2 yet but that would--that would show me that they  
3 do intend to accept their responsibility in the  
4 case based upon the fact that they've agreed not only  
5 to plead guilty but to cooperate fully with the  
6 United States in order to get--.

7 THE COURT: All right.

8 The Court would believe the Defendant Wilson is  
9 entitled to a two point credit. So it would appear  
10 that his category then would be offense level thirty  
11 two and criminal history category roman numeral II.  
12 Is that your calculation, Mr. Young?

13 MR. YOUNG: Yes, sir, Your Honor. And I spoke with  
14 the probation officer and I think it goes from 108 to  
15 135. See if I'm correct. It was a level--offense level  
16 thirty two and I believe it would go to a thirty three  
17 Your Honor.

18 THE COURT: My book says that a thirty two, category  
19 two is 135 to 168.

20 MR. YOUNG: That's the way it is currently figured.  
21 I think, without the acceptance of responsibility,  
22 Your Honor.

23 THE COURT: You're--you're right. So it's 108  
24 to 135?

25 MR. YOUNG: Yes, sir.

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1 THE COURT: Mr. Tucker, have you and the Defen  
2 Williams had an opportunity to review the pre-sente  
3 report?

4 MR. TUCKER: Yes, Your Honor, we have.

5 THE COURT: Are there any objections?

6 MR. TUCKER: Yes, Your Honor. In paragraph six  
7 of our report says that no information, the probati  
8 officer has no information that indicates that Mr.  
9 Williams currently accepts his responsibility. He  
10 Again, the situation with him is the situatio- with  
11 Wilson. He signed a plea agreement and is willing  
12 cooperate fully with the United States. I intend to  
13 him on the stand and call for testimony as to him  
14 accepting full responsibility for his actions.

15 Also paragraph thirty five indicates that Mr.  
16 Williams has three children, in fact, he has four.  
17 I brought this matter up with the probation officer  
18 prior to court today and I believe she would agree  
19 with me on that.

20 THE COURT: All right.

21 MR. TUCKER: We will be offering evidence, You  
22 Honor.

23 THE COURT: Based on the statement Mr. Bradford  
24 made earlier, the Court believes the category should  
25 be reduced for acceptance of responsibility. So that

1 would make it a thirty and roman numeral I.

2 MR. TUCKER: Yes, sir.

3 THE COURT: Apparently 97 to 121.

4 MR. TUCKER: Yes, Your Honor.

5 THE COURT: All right, sir.

6 So while you may want to offer evidence you  
7 needn't offer it on the point of acceptance of  
8 responsibility.

9 That concludes your statement of objection?

10 MR. TUCKER: Yes, Your Honor. We will be offeri  
11 evidence.

12 THE COURT: All right, very good.

13 Mr. Smith, will you be offering evidence?

14 MR. SMITH: No, sir.

15 THE COURT: All right.

16 Mr. Young?

17 MR. YOUNG: No, sir.

18 THE COURT: Mr. Tucker?

19 MR. TUCKER: Yes, sir.

20 THE COURT: You may proceed.

21 MR. TUCKER: I would first call Thelma Williams

22 (WITNESS WILLIAMS SWORN)

23 THELMA WILLIAMS, a witness called by the Defendant, being

24 first duly sworn, testified as follows:

25 DIRECT EXAMINATION,

QUESTIONS BY MR. TUCKER:

Q Ms. Williams, could you state your name.

A Thelma...

THE COURT: Hold on just a second.

Q Ms. Williams, can you state your name to the Court, please.

A Thelma Williams.

Q How long have you know the Defendant Bonnie William

A Two and a half, three years.

Q In what capacity have you known him?

A Excuse me?

Q How--how do you know him? What's your relationship him?

A My boyfriend.

Q Is he the father of your child?

A Yes.

Q How many children do you have?

A Three.

Q Has he--what's his relationship with the three child

A Well, he's like a father to them because they're the father that he knows.

Q Does--does he provide financial support?

A Yes.

Q Does he spend time with your children?

A Yes.

10

1 Q What sort of activities does he engage in with the  
2 children?

3 A He plays with them. If he goes anywhere he takes them  
4 with him. He keeps them.

5 Q Have you ever known Bonnie to be involved with a drug  
6 transaction?

7 A Yes.

8 Q Other than this one?

9 A No.

10 Q Okay.

11 A Not, no.

12 MR. TUCKER: I have no further questions.

13 CROSS EXAMINATION,

14 QUESTIONS BY MR. BRADFORD:

15 Q In otherwords, he admitted to you that he was involved  
16 in this particular offense, hasn't he?

17 A Yes.

18 MR. BRADFORD: No further questions.

19 THE COURT: You may step down.

20 (WITNESS WILLIAMS EXCUSED)

21 MR. TUCKER: May it please the Court, next we would  
22 call Margaret McCoy.

23 THE COURT: All right.

24 (WITNESS MCCLOY SWORN)

25 MARGARET MCCLOY, a witness called by the Defendant, being f

11

1           duly sworn, testified as follows:

2       DIRECT EXAMINATION,

3           QUESTIONS BY MR. TUCKER:

4       Q     Ms. McCloy, could you please introduce yourself to  
5           Court?

6       A     Yes. I'm Margaret McCloy.

7       Q     All right.

8           THE COURT: Is that M-C...

9       A     M-C-C-L-O-Y.

10          THE COURT: Thank you.

11       Q     How did you come to know Bonnie Williams, the Defendant?

12       A     I came to know Bonnie when he was in Junior High. He  
13           been brutally attacked on the campus by a w  
14           prejudiced non-student. And I called the family aft  
15           talking with friends and acquaintances to see if we c  
16           offer some assistance if the child needed plastic  
17           surgery.

18       Q     Did you have other contacts with Bonnie?

19       A     Yes, after that time, the children Bonnie and his sis  
20           were brought to my home by the father. Usually at  
21           Christmas time they would bring a gift and come and  
22           spend time with me. I have a--I had invited Bonnie  
23           to birthday parties of-my children in the home and  
24           had taken him on several trips to the mountains wi  
25           my children.

12

1 Q What sort of family does he come from?

2 A I believe that this family is a very christian family.  
3 They have very worthwhile values. I like the family  
4 very much. I respect them.

5 Q Have you ever known Bonnie to be involved with any  
6 illegal activities?

7 A No, I have not.

8 MR. TUCKER: I don't have any further questions,  
9 Honor.

10 MR. BRADFORD: No questions, Your Honor.

11 THE COURT: Thank you very much.

12 WITNESS MCCLOY: Thank you.

13 (WITNESS MCCLOY EXCUSED)

14 MR. TUCKER: May it please the Court, next we w  
15 call Pastor Sarah Blackburn, please.

16 (WITNESS BLACKBURN SWORN)

17 PASTOR SARAH BLACKBURN, a witness called by  
18 Defendant, being first duly sworn, testified as  
19 follows:

20 DIRECT EXAMINATION,

21 QUESTIONS BY MR. TUCKER:

22 Q Pastor Blackburn...

23 A Yes, sir.

24 Q ...could you identify yourself to the Court, please

25 A Yes, sir. My name is Pastor Sarah Blackburn from Hic

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1 North Carolina.

2 Q How long have you known the Defendant Bonnie Willia

3 A All his life.

4 Q How long have you known his parents?

5 A I knew the parents--his parents before he was ever b

6 Q Well he has a home...

7 A They come...

8 Q ...what sort of a home life has he had?

9 A Lovely christian home. Christian family.

10 Q Do you have any personal knowledge of any illegal  
11 activities on the part of Bonnie other than this  
12 activity he's been charged with, that he's here tod  
13 for?

14 A No, sir. No, sir.

15 MR. TUCKER: I have no further questions, Your Ho

16 MR. No questions, Your Honor.

17 THE COURT: Thank you very much. You may step o

18 (WITNESS BLACKBURN EXCUSED)

19 MR. TUCKER: May it please the Court, next we w  
20 call Monice Gaither.

21 (WITNESS GAITHER SWORN)

22 MONICE LAVERNE GAITHER, a witness called by the Defenc  
23 being first duly sworn, testified as follows:

24 DIRECT EXAMINATION,

25 QUESTIONS BY MR. TUCKER:

1 Q Ms. Gaither, could you identify yourself to the Court,  
2 please.

3 A Yes. Monice LaVerne Gaither.

4 Q And how do you know Bonnie Williams?

5 A He's the father of my three kids.

6 Q And what are the ages of those--those three children?

7 A Six, three and one.

8 Q What sort of a father is he?

9 A He's a good father. He...

10 Q I'm sorry?

11 A He's good with them. He takes time out for them.

12 Q He spends time with them?

13 A Yes.

14 Q Does he financially support the children?

15 A Yes.

16 Q How have the children reacted to his incarceration?

17 A My eldest little girl she's not doing too good in  
18 school this year. I think that's--bad time with  
19 she's so used to him being around her and everything.  
20 And she don't get to see him this much. She don't  
21 --it.

22 Q Before Bonnie was put into jail how often would he see  
23 your children?

24 A About every day.

25 Q Okay.

1 financially?

2 A Well, he always had a job. He always worked. We always  
3 was close, you know, close family. Him and my wife  
4 I have a daughter too, daughter older than him. And  
5 we're real close. We always do things together. When  
6 high school we always went to--I went to his track meet.  
7 He was on the Junior Police Team in Hickory. We always  
8 went out of town together. To Atlanta, carping--in  
9 Hickory. We always went together on everything. We  
10 a lot of fun together. But I have never known him to  
11 anything like this before.

12 Q So you've been close...

13 A Real close.

14 Q ...throughout the beginning--.

15 A I have never seen--I have never seen him come in drunk  
16 smoking or anything like that. Never seen him do that.

17 Q --to use drugs?

18 A No.

19 MR. TUCKER: I have no further questions, Your  
20 Honor.

21 MR. BRADFORD: I have no questions.

22 THE COURT: Thank you, sir.

23 (WITNESS B. WILLIAMS SR. EXCUSED)

24 MR. TUCKER: Your Honor, I just have one more  
25 witness I'd like to call. I'd like to call Christi

1 Nichol.

2 THE COURT: All right.

3 (WITNESS NICHOL SWORN)

4 CHRISTINE NICHOL, a witness called by the Defendant, being

5 first duly sworn, testified as follows:

6 DIRECT EXAMINATION,

7 QUESTIONS BY MR. TUCKER:

8 Q Ms. Nichol, could you identify yourself to the Court,  
9 please.

10 A I'm Christine Nichol, a U.S. Probation Officer in  
11 Hickory.

12 Q And you, in the course of your responsibilities and  
13 duties, you did the investigation on Bonnie Williams  
14 did you not?

15 A I did.

16 Q And what did that investigation turn up regarding  
17 support and structure down there in Hickory where  
18 from?

19 A Pardon me?

20 Q What did that investigation reveal regarding his  
21 support and structure down there in Hickory where  
22 he's from, family and friends?

23 A I received several letters from some of the people you  
24 had up here this afternoon and others in the community  
25 that spoke well of Mr. Williams--Williamson--William

18

1 Q Did you have a letter from a police officer down the  
2 in Hickory?

3 A I did.

4 Q What was the content of that letter?

5 A Just expressing support and concern for Mr. William  
6 Also it indicates that he knew the Defendant from his  
7 involvement in a youth program for twelve to thirteen  
8 year olds. And that he was impressed by his participation  
9 in that and thought he came from a good family.

10 MR. TUCKER: I don't have any further questions  
11 Your Honor.

12 MR. BRADFORD: No questions.

13 THE COURT: Thank you. Thank you.

14 (WITNESS NICHOL EXCUSED)

15 MR. TUCKER: Your Honor, that would conclude our  
16 evidence. We don't have anything to argue at this  
17 point.

18 THE COURT: All right.

19 I take it there's no other evidence, then, from  
20 any of the Defendants?

21 MR. YOUNG: We'd just like to be heard, Your Honor,  
22 in argument.

23 THE COURT: All right.

24 Is this--Mr. Smith?

25 MR. SMITH: Yes, sir.

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1 THE COURT: Madam Clerk.

2 Mr. Bradford, will the Government--is the Govern  
3 ready to do the factual basis at this point?

4 MR. BRADFORD: Yes, sir. If I could have just  
5 moment, I'll turn to the page. I'm gonna read it  
6 the record without objections from the Defendants.

7 Your Honor, I'll start off, if I can, by just  
8 covering the offense conduct which appears on page  
9 two and three of the pre-sentence report. If Your  
10 wants I can read that into the record.

11 THE COURT: I have read it and the Defense cou  
12 indicates they've all read it also.

13 MR.. BRADFORD: Very good. The only addition to  
14 would be there was an interview with several of th  
15 individuals. And with one of them Mr. Williams indi  
16 that when they got ready to leave that Mr. Cradle  
17 handed the bag of cocaine, I believe, to Mr. Wilson  
18 held--who held the cocaine. And then it was ultima  
19 handed to Mr. Williams. And then when this--when t  
20 suddenly saw the police were after them and then w  
21 they ended up stopping the car they made a run for  
22 One of the individuals ended up with the cocaine.  
23 I think the significance of that on a factual basi  
24 that all three of them, actually, during the chase a  
25 time or another held the cocaine in their hands o

1 the period of time that they were being sought by t  
2 police.

3 The evidence would also show that the instigat  
4 of this was Mr. Cradle who came down from New York,  
5 was previously convicted. And he was the one who got  
6 other two individuals involved in this particular  
7 adventure.

8 That in addition to what's in the--conduct in  
9 pre-sentence report, the Government would rest on t  
10 factual basis. This was all crack cocaine.

11 THE COURT: All right.

12 I'll ask the Defense, then, through counsel, do  
13 all accept the statement set forth on page two and t  
14 of the PSI and Mr. Bradford's verbal addendum to it a  
15 factual basis in this case?

16 MR. SMITH: As for Mr. Cradle, he would accept  
17 statement.

18 THE COURT: All right, sir. Mr. Young?

19 MR. YOUNG: Judge, my client will accept with  
20 the exception of the statement, I think I heard Mr  
21 Bradford correctly in his addition, that they all r  
22 I think. And my client tells me he didn't attempt  
23 flee or run from the scene but remained there when  
24 stop was made.

25 THE COURT: All right.

1 MR. TUCKER: May it please the Court, my client  
2 advises me that he would accept the statement in its  
3 entirety.

4 THE COURT: All right. Thank you very much.

5 MR. BRADFORD: Your Honor, that would be through  
6 fourteen on page three, if there's any question about  
7 it. All the way down to paragraph fourteen where  
8 lists the weight of the cocaine.

9 THE COURT: All right.

10 MR. BRADFORD: Thank you, Your Honor.

11 THE COURT: Let the record show that based upon  
12 Defendant's admissions and pleas of guilty and the  
13 evidence presented the Court finds there is a factual  
14 basis for the plea in each case and hereby affirms  
15 acceptance of those pleas and enters thereupon a verdict  
16 of guilty.

17 All right, Mr. Smith, would you be heard at this  
18 time?

19 MR. SMITH: Yes, sir.

20 If it please the Court, I can't add anything  
21 to the pre-sentence report other than, of course,  
22 we had objected to and made reference to previously.

23 Mr. Cradle is aware of the mandatory minimum  
24 sentence that he is facing. And he's also aware of  
25 his involvement, of course, in this whole offense.

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1 he's been willing to accept the responsibility for  
2 his actions. Even when Mr. Bradford indicated that  
3 Cradle is the one who basically instigated this who  
4 affair, Mr. Cradle has accepted that responsibility.

5 And, of course, as Your Honor knows, he is from  
6 York, lives in New York. He was arrested on the spot  
7 on April 30th of this year and has been in custody  
8 since. For some short period of time he was in cus  
9 on state charges and these charges came up as well.  
10 course, Your Honor is aware that Mr. Cradle was on  
11 probation at the time that this happened from the N  
12 York offense. And, therefore, the statute kicks in  
13 if we were--if it were not for that we would argue  
14 Mr. Cradle would be looking at a level, offense le  
15 of thirty in a category two, which is where the oth  
16 Defendants are, I believe, looking at a hundred and  
17 eight months to a hundred and thirty five months.  
18 simply for the fact that he has this prior convict  
19 he's looking at about twice what the guidelines wo  
20 have given him otherwise in terms of the mi  
21 mandatory time.

22 I would just like to argue to the Court and p  
23 that the Court impose only mandatory minimum time  
24 not go beyond that because of this main, mainly th  
25 factor in that this one other conviction. Just on

1 other conviction is enough to double his time.

2 Of course, unfortunately Mr. Cradle I'm sure was  
3 aware of that before he got involved in this business.  
4 And if he had been aware of that it might have changed  
5 his mind about his conduct. Now, of course, it's too  
6 late for him to find out about that. But we would just  
7 ask the Court to be as merciful as possible. Presenting  
8 report in terms of fines and his financial indicates  
9 he has no financial ability to pay for virtually  
10 anything. Of course, he has been in custody since April  
11 30th and hasn't been bringing any kind of income.  
12 I don't think that he had much capability of earning  
13 an income prior to that even when he was out. Although  
14 he tells me that he's been working with his family all  
15 his adult life in one capacity or another.

16 Mr. Cradle, I would offer him to the Court, if  
17 Your Honor would like to hear from him.

18 THE COURT: Mr. Cradle, would you care to make  
19 kind of statement at all at this time?

20 MR. CRADLE: I will make a statement, Your Honor.

21 THE COURT: Please do.

22 MR. CRADLE: I'm sorry I brought these men in on  
23 crime that I committed. And I'm really sorry, you know  
24 --you on this crime. And that's all I can say, Your  
25 Honor.

24

1 THE COURT: All right, sir. Thank you very much.

2 DEFENDANT CRADLE: Thank you.

3 MR. SMITH: That's all.

4 THE COURT: I think we'll proceed to hear from other  
5 and we'll come back to you.

6 MR. YOUNG: Thank you, Judge. Your Honor, Paul  
7 seated before you basically a broken man. I've talked  
8 to him several times and we keep going back over and  
9 over this conduct and--and how particularly strict  
10 federal court is on such behavior. And I respect Mr.  
11 Smith's client for what he just said to the Court in  
12 saying I'm sorry I got these men involved in this  
13 crime.

14 Now, Paul Wilson tells me he barely knew this  
15 and had just known him for a brief period of time.  
16 I guess, Your Honor, he was more or less what I call  
17 mule or just somebody to help deliver or help prepare  
18 these drugs. He made very little, if any, compensation  
19 from this activity. And he basically tells me he received  
20 a phone call and said do you want to make a couple  
21 quick bucks and these are the most expensive quick bucks  
22 he's ever agreed to make in his life.

23 He keeps bringing up to me about his children,  
24 Your Honor, he has two. His fiancée is here and she's in  
25 courtroom back there with his mother. One of them

25

1 think. Your Honor, he's never even seen, just a few  
2 months old. So he's real concerned about trying to go  
3 back and get reunited with his family. I spoke with  
4 his mother, she's also here, she's extremely upset.  
5 for good reason.

6 And, Judge, if you look at the criminal history  
7 of Paul it's relatively minor. I certainly hope, Ju  
8 and of course Your Honor does know and I mean, when  
9 were going over our options in this--in this case fr  
10 the first he said go over to the U.S. Attorney and y  
11 know. I'll do anything I can to--to reduce this sente  
12 and they've all agreed, which I think is admirable,  
13 assist the Federal Government in this case in further  
14 investigations, if any.

15 But from right at first he admitted  
16 responsibility to me, Judge. And it's hard to talk a  
17 to--to tell this young man the amount of time he's  
18 facing because of the sheer mountain type of these  
19 drugs that were involved.

20 And, Judge, for all of those reasons, for what  
21 we would say his minimal role and his family situat  
22 for his mother, for his children, for his future, w  
23 hope Your Honor will give him the minimum in this  
24 case and hopefully he can come back and provide mor  
25 for the Government and get some further assistance

26

1 far as his sentence.

2 THE COURT: All right, sir. Thank you.

3 I will note it states minor detail on the front  
4 page of his PSI that his age is twenty--either twenty  
5 seven or twenty eight, is that correct?

6 DEFENDANT WILSON: Excuse me.

7 MR. YOUNG: Age?

8 DEFENDANT WILSON: I'm twenty.

9 MR. YOUNG: Twenty.

10 THE COURT: Date of birth 1962?

11 DEFENDANT WILSON: No, '69.

12 MR. YOUNG: '69.

13 THE COURT: '69, that's the error then.

14 MR. YOUNG: He is just twenty, Your Honor.

15 THE COURT: All right.

16 MR. YOUNG: Paul, would you like to address the  
17 Court?

18 DEFENDANT WILSON: Yes.

19 THE COURT: Well, let me get this detail right.  
20 You say you were born in 1969, so you're presently  
21 twenty?

22 DEFENDANT WILSON: Yes, sir.

23 THE COURT: It's indicated on page four that a  
24 offense of larceny was committed at age twenty six.  
25 That's pretty tough to do if you're only twenty now.

27

1 So, I take it there's some error there?

2 MR. YOUNG: Yes, sir.

3 Well, we agreed with the convictions and read  
4 but must have missed that, Your Honor. Larceny  
5 conviction.

6 THE COURT: Well, when did that occur, well it  
7 apparently occurred in 1989. All right. All right.

8 Let's go on then. That's all that you have to  
9 say about that?

10 MR. YOUNG: Yes, sir.

11 THE COURT: All right.

12 Mr. Wilson, would you care to say anything in  
13 own behalf at this time, sir?

14 DEFENDANT WILSON: Yes, sir.

15 I'm sorry I got into this. It's hard being in  
16 here because I've never been away from my family more  
17 more than twenty days. And all this time in here has  
18 been hard, you know what I mean. And I hate to  
19 think about my--my kids, one I never seen, growing  
20 without a father. I grew up without a father and  
21 I can't see my kids doing that. My fiancée grew up  
22 without a father and I don't want her to go through  
23 with my kids-go through the same thing I went through.  
24 And I ask the Judge, Mr. D.A. to have mercy upon me.  
25 And find it in your heart to give me as little as

1 possible, I guess. So.

2 THE COURT: Thank you very much, Mr. Wilson.

3 Mr. Tucker?

4 MR. TUCKER: Your Honor, with regard to all the  
5 of these men I think this is a very sad situation.  
6 There's my client, he's got four children. And these  
7 children are victims of this victimless crime. He's  
8 got one child seven months old and he's got, as  
9 we heard from Monice, he's got other children, three  
10 daughters ranging six, three and one.

11 At the time of the commission of this offense  
12 Williams was out of a job, he didn't have the money,  
13 Hickory is a depressed area and these people are poor.  
14 That is not an excuse to break the law. But I say to  
15 Your Honor, by way of hoping that Your Honor can consider  
16 that in imposing sentence.

17 I would ask Your Honor to consider any alternatives  
18 that might be applicable in this situation. These fellows  
19 have committed a very serious crime. But the perception  
20 among a lot of people in the community is that what  
21 did is quote "not that big of a deal" unquote. It's a  
22 big deal especially in the federal court. But they say  
23 all the time how the recession is, commit a crime and  
24 you're out of prison in no time. That's not the way it  
25 it should be but I think that's the perception of a

1 of people. These fellows didn't understand what the  
2 were doing here.

3 Mr. Williams tells me that he was approached by  
4 Mark Tandy, who really ought to be sitting in this  
5 courtroom right now, had been shot on a drug deal and  
6 was not able to do whatever was required by the man  
7 New York. So he was recruited and paid a very small  
8 of money considering the amount of money that was brought  
9 in or could have been brought in had all this cocaine  
10 been sold on the street. Some bills were flashed in  
11 face more or less and he was facing the situation of  
12 having any money. Money to support his children.  
13 he figured well I'll just make a quick buck. There  
14 no evidence that he's ever done anything like  
15 before. And I think, Your Honor, that the circumstances  
16 caught Bonnie in a situation where he was the most  
17 susceptible to this sort of an opportunity, perceived  
18 opportunity. And a few hours later he finds himself  
19 in custody, his whole life is ruined because he made  
20 one bad mistake.

21 Your Honor, I--I've told the District Attorney  
22 U.S. Attorney that he'd be more than happy to cooperate  
23 and testify against any other individuals that might  
24 be involved in this. And the only one we know of is  
25 Mark Tandy and it's my understanding he's now free

1 in Hickory.

2 Your Honor, we would ask you to consider the  
3 impact of what's happened. Not just on Bonnie but  
4 on his four children as well. As Paul Wilson said  
5 it's not gonna be easy for these kids to be raised  
6 without a daddy. And they've had a daddy up until  
7 Bonnie made this mistake. And Bonnie made the mistake  
8 and he's gonna have to pay for it. To the extent  
9 possible, Your Honor, we ask that only Bonnie pays  
10 the mistake and not his children. And we also ask that  
11 Your Honor consider his history of not having any  
12 criminal activity and give him the least sentence  
13 possible.

14 Thank you. I believe he would like to address  
15 Your Honor.

16 THE COURT: All right, sir. Mr. Williams.

17 MR. WILLIAMS: I want to say I'm sorry for the  
18 I committed. And I ask to provide me one more chance  
19 have mercy on--too. I'd like to raise my kids so they  
20 don't get into nothing like this, Your Honor. And  
21 I'm sorry.

22 THE COURT: All right, sir. Thank you very much.  
23 Anything further, Mr. Bradford.

24 MR. BRADFORD: Just, Your Honor, the--this appears  
25 to be a case of just total irresponsibility. The

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1 acceptance of responsibility that these people are  
2 taking in this case may well be the first time they  
3 have accepted responsibility for anything in their  
4 lives. They all have kids out of wedlock. I mean,  
5 here's this fellow here he's--poor old Bonnie, he's  
6 down--he got beat up at the school. Poor old Bonnie  
7 comes over at Christmas. Poor old Bonnie, and then  
8 has four kids out of wedlock who probably, if the t  
9 is known, the tax payers of this country are support  
10 And now he comes in here and he's in a situation wh  
11 he's given an opportunity to do the right thing and  
12 the wrong thing and what does he do: he takes it,  
13 instead of having a regular job shows his kids arou  
14 alot, instead of having a regular job, he  
15 employment in an organization where the last perso  
16 in his position got shot. Boy that's a genius thi  
17 to do. But it's about time that these men  
18 responsibility for what they're doing and start gr  
19 up and--he may have been dealt a worse hand than so  
20 the rest of the people in this courtroom today. Bu  
21 the song says, every hands a winner and every ha  
22 looser and he's the one who's turned his life into  
23 loss at this point. And his kids may have to suffer  
24 that's on his shoulders and that's on his shoulder  
25 that's on his shoulders. Because they had the choi

32

1 to do it and they made the wrong decision.

2 I just wanted to say that they--better for the  
3 of these people there that's in that community that  
4 they think they didn't do a big thing they--change  
5 idea because this is a big thing and they're gonna  
6 out that they're not gonna be back in the community  
7 for a long, long time. If the rest of that community  
8 wants to do that, that's fine, because we'll take them  
9 and put them up too.

10 Mr. Cradle, twenty years is the minimum sentence.  
11 I think that would be appropriate in this case. And  
12 agree with Mr. Smith, we don't ask for more.

13 These two Defendants we--I think the bottom end  
14 of the guideline range in these particular cases will  
15 be enough. They both have small criminal records up  
16 to this point and it's not the Government's intention  
17 to add any more time to them. But I do get tired of  
18 apologies being made in this courtroom from people  
19 have made bad choices with their lives. These men have  
20 the choice to do the right thing. Hundreds of people  
21 their identical situations make the right choices every  
22 day and go out here and try to work hard and try to  
23 support their families and try to do the right thing.  
24 And it is--it is a blow to them to think that these  
25 people--for these people to come in and say they

33.

1 couldn't have done the same thing. They could have,  
2 they made the wrong choice and they're gonna be  
3 justly punished for it today.

4 THE COURT: Anything further, then, from Defense  
5 counsel?

6 MR. SMITH: No, sir.

7 MR. YOUNG: No, sir, Your Honor.

8 MR. TUCKER: No, Your Honor.

9 THE COURT: All right. Any reason why the sentence  
10 should not be stated at this time?

11 MR. SMITH: No, sir.

12 MR. YOUNG: No, Your Honor.

13 MR. TUCKER: No, Your Honor.

14 THE COURT: The Court will observe that the, as I  
15 been noted here already, the matter is a tragedy for  
16 all concerned. In the first place it's a tragedy for  
17 people who suffer from drug addiction. And, of course,  
18 the reason you are all Defendants in this case is because  
19 as a part of the drug problem you contribute to drug  
20 addiction, which makes an every expanding circle of  
21 people who are either in jail or suffering outside  
22 of jail from addiction. There are many ill effects  
23 on society in general as a result of drugs. Fetus' are  
24 are--come into the world addicted. Any number of evils  
25 arise from it. Other crimes, larcenies. And I think

1 you gentlemen, the three of you are Defendants, are  
2 able to understand these things. It's most unfortun  
3 --you're going to jail and you're around a lot of o  
4 people who are part of the criminal culture and prob  
5 the drug culture. And I can only say that I hope t  
6 each of you is able to remember the kind of good th  
7 your counsel have said about you and remember that  
8 is the kind of person that you are and that you will  
9 to be when you get out of prison.

10 But the Court is going to sentence each of you  
11 the minimum allowed by law. And that is because--  
12 because in large part of the good things your couns  
13 said about you and because Congress has determined  
14 get stiff sentences for what you've done and you  
15 have to serve those sentences.

16 Pursuant to the sentencing reform act of 1984  
17 it's the judgment of the Court that Defendant  
18 Cradle is hereby committed to the custody of the  
19 Bureau of Prison for a term of twenty years.

20 Upon release from imprisonment the Defendant s  
21 be placed on supervised release for a term of ten  
22 years. Within seventy two hours of release from  
23 the custody of the Bureau of Prison Defendant shall  
24 report in person to the probation office in the  
25 district to which he is released. While on super-

1.       vised release Defendant shall not commit another  
2.       federal, state or local crime. Shall comply with  
3.       the standard conditions adopted by the Court.

4.       Defendant shall participate in a--in a program  
5.       of testing and treatment for drug or alcohol abuse  
6.       as directed by the probation officer until released  
7.       from the program by the probation officer.

8.       Other conditions of supervised release: that  
9.       he not possess a firearm or other dangerous weapon.

10.       That he pay a special assessment of one hundred  
11.       and fifty dollars, which is mandatory without interest  
12.       on a schedule to be established by the probation officer.

13.       Any reason why that sentence should not be imposed  
14.       as stated, Mr. Smith?

15.       MR. SMITH: No, sir. May it please the Court we  
16.       only ask that he be given credit for his pre-trial  
17.       confinement. He is given credit.

18.       MR. BRADFORD: Thank you.

19.       THE COURT: Now, then, with reference to Defendant  
20.       Wilson. Pursuant to the sentencing reform act of  
21.       1984 it's the judgment of the Court that the Defendant  
22.       is hereby committed to the custody of the Bureau of  
23.       Prisons for one hundred and eight months.

24.       Upon release from imprisonment you shall be  
25.       placed on supervised release for the sum of five

1 years. Upon release from imprisonment he shall  
2 be--shall report in person to the probation office  
3 in the district to which he is released.

4 Following supervised release he shall not  
5 commit another crime, federal, state or local. Shall  
6 comply with the standard conditions adopted by this  
7 court and the following additional condition:

8 That he participate in a program of testing  
9 and treatment for drug and alcohol abuse or both  
10 as directed by the probation officer until released  
11 from the program by the probation officer.

12 He shall further pay a fine, rather, a special  
13 assessment, which is the mandatory assessment in the  
14 amount of one hundred and fifty dollars without  
15 interest on a schedule to be established by the  
16 probation officer.

17 Any reason why this sentence should not be  
18 imposed as stated?

19 MR. YOUNG: No, sir, Your Honor.

20 THE COURT: All right.

21 In the case of Mr. Williams the Court acknowledged  
22 of course, the presence of all those who have been here  
23 and testified in this--in these cases. And Mr. Williams  
24 is indeed fortunate to have the support that he had  
25 particular.

1 All right.

2 Pursuant to the sentencing reform act of 1984  
3 the judgment of the Court that Defendant Williams is  
4 hereby sentenced to the custody of the Bureau of  
5 Prisons for a term of ninety seven months. Within  
6 seventy two hours of release from the custody of the  
7 Bureau of Prisons he shall report in person to the  
8 probation officer in the district to which he is  
9 released.

10 While on supervised release he shall obey all  
11 laws, federal, state and local. Obey the standard-  
12 comply with the standard conditions adopted by the  
13 Court and the following additional conditions:

14 That he participate in a program of testing  
15 or treatment for drug or alcohol abuse or both  
16 as directed by the probation officer if deemed  
17 necessary by the probation officer, until such time  
18 Defendant is released from that program by the proba  
19 officer.

20 Further, he shall not possess a firearm or oth  
21 dangerous weapon. That condition also applies in t  
22 case of Mr. Wilson.

23 Further, Defendant shall pay the mandatory spe  
24 assessment in the amount of one hundred and fifty  
25 dollars without interest on a schedule to be establi

1 by the probation officer.

2 Any reason why this sentence should not be imp  
3 as stated?

4 MR. TUCKER: No, sir.

5 THE COURT: The term of supervised release for  
6 the--for Mr. Williams is five years. That being  
7 the guideline term.

8 Now, then, the sentences announced here for  
9 each Defendant pertain to each of the three counts  
10 and as among the counts they will run concurrently  
11 Likewise, as to supervised--the terms of supervised  
12 release.

13 Any questions--any reason the sentence should  
14 not be stated--should not be posed as stated?

15 MR. TUCKER: No, Your Honor.

16 MR. YOUNG: No, Your Honor.

17 THE COURT: All right.

18 Now, then, each Defendant is entitled to appeal  
19 the sentences. And you would do that unless your  
20 plea agreements contain a provision that you will  
21 not appeal. You may talk with your attorney about  
22 that. You would appeal, if you are allowed to do  
23 so, by giving notice to the Clerk of Court within  
24 ten days of today of your intention to appeal.

25 All right.

1 Each of the other Defendants, likewise, is given  
2 credit for time served.

3 Let the sentences be imposed as stated. It is  
4 unfortunate that there may be people in the community  
5 who see that various people get out of jail in almost  
6 time at all in the state court systems because they  
7 full. Supposedly they're trying to build new prisons  
8 in the state system. But it may well be that that causes  
9 some people to believe they can get by with criminal  
10 activity. Pay little or no price for it. Unfortunately  
11 for such people they come to the federal system and  
12 they find there is plenty of room at the inn.

13 But, nevertheless, this Court believes that the  
14 horror of drug use and addiction is bad enough that  
15 sentences are well deserved. So, I--it's with a heavy  
16 heart that I hand out any sentence to gentlemen like  
17 you that I--I'd rather see you playing football or  
18 something of that nature, good for you. And helping  
19 your families that you've talked about, your children.  
20 That isn't the case here, so we have a heavy burden  
21 that falls on all of the participants in a process  
22 such as this.

23 Thank you all very much.

24 MR. YOUNG: Thank you.

25 MR. TUCKER: Thank you, Your Honor.

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NORTH CAROLINA  
STATESVILLE DIVISION

UNITED STATES OF AMERICA

Plaintiff

VERSUS

MARIO CRADLE, B.E: WILLIAMS, AND  
PAUL E. WILSON

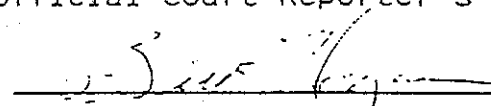
Defendants

\*  
\*  
\*  
\* ST-CR-90-17-3  
\*  
\* SENTENCING  
\*  
\*  
\*

CERTIFICATE OF REPORTER

I, Bill Hogan, do hereby certify that the above and foregoing transcript, consisting of Pages 1 through 40 is a true and correct and accurate transcript of the proceedings as requested to be transcribed, had in the hearing of the above cause on October 9, 1990, before Honorable Richard L. Voorhees, Judge of said Court, as reported and transcribed by me as Official Court Reporter for the above Court.

This transcript has been produced in accordance with 28 USC 753 and the written request by the ordering party. The page rates charged for the this transcript are those in effect at the time of typing, and the rates as posted in the District Clerk's Office and the Official Court Reporter's Office.

  
Bill Hogan, Official Court Reporter

**Exhibit "C"**

*Exhibit C*

UNPUBLISHED

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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No. 00-7187

---

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

MARIO LEONARDO CRADLE,

Defendant - Appellant.

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Appeal from the United States District Court for the Western District of North Carolina, at Statesville. Richard L. Voorhees, District Judge. (CR-90-17-ST, CA-95-121-5-V)

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Submitted: October 12, 2000

Decided: October 20, 2000

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Before WILLIAMS and MOTZ, Circuit Judges, and HAMILTON, Senior Circuit Judge.

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Dismissed by unpublished per curiam opinion.

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Mario Leonardo Cradle, Appellant Pro Se. Brian Lee Whisler, UNITED STATES ATTORNEY'S OFFICE, Charlotte, North Carolina, for Appellee.

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Unpublished opinions are not binding precedent in this circuit.  
See Local Rule 36(c).

PER CURIAM:

Mario Leonardo Cradle seeks to appeal the district court's order denying his motion filed under 28 U.S.C.A. § 2255 (West Supp. 2000). We dismiss the appeal for lack of jurisdiction because Cradle's notice of appeal was not timely filed.

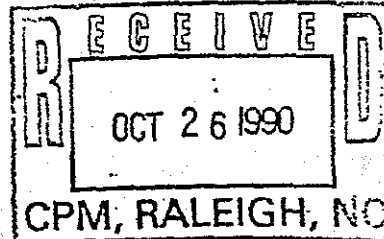
Parties are accorded sixty days after entry of the district court's final judgment or order to note an appeal, see Fed. R. App. P. 4(a)(1), unless the district court extends the appeal period under Fed. R. App. P. 4(a)(5) or reopens the appeal period under Fed. R. App. P. 4(a)(6). This appeal period is "mandatory and jurisdictional." Browder v. Director, Dep't of Corrections, 434 U.S. 257, 264 (1978) (quoting United States v. Robinson, 361 U.S. 220, 229 (1960)).

The district court's order was entered on the docket on September 19, 1996. Cradle's notice of appeal was filed on August 17, 2000. Because Cradle failed to file a timely notice of appeal or to obtain an extension or reopening of the appeal period, we deny a certificate of appealability and dismiss the appeal. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

DISMISSED

**EXHIBIT "D"**

Probation Form 27  
(7/75)



UNITED STATES DISTRICT COURT  
FEDERAL PROBATION SYSTEM  
TRANSMITTAL OF PRESENTENCE REPORTS  
TO INSTITUTION

Address of Probation Office

Chief U. S. Probation Office  
227 Federal Building  
401 West Trade Street  
Charlotte, N. C. 28202

Date October 25, 1990

Mr. Larry Jones  
Correctional Management Center  
P.O. Box 27743  
Raleigh, N.C. 27611

Enclosed are two copies of the presentence report made in the case of:

Mario Lenardo CRADLE

In custody.

S. Thomas Noell, Jr., Chief  
U. S. Probation Officer

cc: Probation Officer McLean  
Hickory, NC

UNITED STATES DISTRICT COURT  
FOR THE  
WESTERN DISTRICT OF NORTH CAROLINA

UNITED STATES OF AMERICA )

vs )

MARIO LENARDO CRADLE )

Docket No. ST-CR-90-17-1

PRESENTENCE REPORT

Prepared for: Honorable Richard L. Voorhees Sentencing Date: October 1990  
United States District Judge

Prepared by: James R. McLean, Jr. Office Location: Hickory, NC  
United States Probation Officer

Offense: 21 USC section 841(a)(1) and 846--Conspiracy to Manufacture and Possess with Intent to Distribute in Excess of 50 Grams of Cocaine Base; Manufacturing in Excess of 50 Grams of Cocaine Base; Possessing with Intent to Distribute in Excess of 50 Grams of Cocaine Base; and Aiding and Abetting

Date of Arrest: June 21, 1990

Custodial Status: Detained Since June 21, 1990

Identifying Data

Date of Birth: April 23, 1962 Age: 28 Citizenship: US Citizen  
Race: Black Sex: Male Dependents: One  
FBI No.: 858 397 LAO SSN: 117-56-5588 Other ID No.: NYSID 588342  
Education: 10th Grade U. S. Marshal No.:  
Legal Address: 719 Alabama Avenue  
Brooklyn, NY 11207

Detainers:

Codefendants: Bonnie Eugene WILLIAMS, Jr. (ST-CR-90-17-02)  
Paul Eric WILSON (ST-CR-90-17-03)

Assistant U. S. Attorney

Defense Counsel

Max O. Cogburn, Jr.  
306 US Courthouse  
100 Otis Street  
Asheville, NC 28801-2611  
(704) 259-0661

Roger T. Smith  
P. O. Box 7172  
Asheville, NC 28802  
(704) 254-4658

Date Report Prepared: September 14, 1990 Mandatory Minimum: Yes

## PART A. THE OFFENSE

### Charge and Conviction

1. Mario L. Cradle, the defendant was indicted in three counts by a Western District Of North Carolina Grand Jury on June 6, 1990. Count One charged that on or about April 30, 1990, the defendant did conspire with others to manufacture and possess with intent to distribute in excess of 50 grams of cocaine base, in violation of Title 21 U.S.C. section 846. Count Two charged that on April 30, 1990, the defendant did manufacture and aid and abet others in the manufacturing of in excess of 50 grams of cocaine base, in violation of Title 21 U.S.C. section 841(a)(1); Title 18 U.S.C. section 2. Count Three charged that on April 30, 1990, the defendant did possess with intent to distribute and aid and abet others in the possession with the intent to distribute in excess of 50 grams of cocaine, in violation of Title 21 U.S.C. section 841(a)(1); Title 18 U.S.C. section 2.
2. On August 22, 1990, pursuant to a written Plea Agreement, Cradle pled guilty to the three-count Bill of Indictment.
3. Since the offense took place after November 1, 1987, the Sentencing Reform Act of 1984 is applicable.

### Related Cases

4. Bonnie Eugene Williams, Jr., codefendant in ST-CR-90-17-02, was also indicted in the three-count Bill of Indictment. On August 7, 1990, Williams entered a plea of guilty to the indictment pursuant to a written Plea Agreement. Sentencing date has been set for the October 1990 Term of the United States District Court, Statesville, North Carolina.
5. Paul Eric Wilson, codefendant in ST-CR-90-17-03, is charged also in the three-count Bill of Indictment. On August 9, 1990, Wilson entered a plea of guilty to the indictment pursuant to a written Plea Agreement. Wilson is to appear before the United States District Court, Statesville, North Carolina, during the October 1990 Term for sentencing.

The Offense Conduct

6. On or about April 30, 1990, J. L. Eddins, investigator for the Hickory Police Department, received information from a confidential source that the codefendants were involved in the cooking of crack cocaine at 1259 22nd Street, SW, Hickory, North Carolina. As a result of this information, a surveillance team consisting of Sergeants D. R. Carlsen, C. J. Deal, Investigators J. L. Blackburn, L. H. Caudill, Officer G. A. Shook from the Hickory Police Department, and Special Agent Daniel Dubree, FBI Office, Hickory, North Carolina, began a surveillance of this residence.
7. Investigator Eddins's report indicates the surveillance team observed several individuals entering and leaving the residence located on 22nd Street, NW. After approximately four hours of surveillance, the defendants left the apartment and got into their vehicle. As the defendants' vehicle was traveling away from the immediate area, the defendants saw Officer Shook's marked patrol unit and attempted to return to the apartment with the officers in pursuit.
8. Upon the defendants' vehicle reaching the apartment area, Williams exited the vehicle and was observed running from the area with a white bag in his hand. Williams later was apprehended by Officer Shook.
9. Subsequent interviews with witnesses in the area led officers to a leaf pile. It was reported that this leaf pile was where Williams had disposed of the items he had been carrying. A search of the pile led to the recovery of two plastic bags of crack cocaine.
10. A search was also conducted of the vehicle and the brown paper bag which Williams was observed placing in the trunk was recovered. This brown paper bag contained scales, razor blades, coffee pot, plate with residue, spoon with residue, baking soda and an undetermined amount of clear plastic bags with the corners cut out.
11. Law enforcement officers attempted to interview Paul Eric Wilson; however, Wilson made no statement.
12. Mario Cradle, after having had advised of his rights, stated he had traveled from Brooklyn, New York, to Charlotte, North Carolina, and was picked up by Williams and Wilson and taken to the Hickory area. He

further stated this was his second trip to Hickory, the last being approximately a month prior to his arrest. He stated the purpose of his travel to Hickory was to visit his brother, Mark Pandey. With regards to the crack cocaine, Cradle stated that he remained in the living room of the apartment while a black female and the other two black males cooked the cocaine.

13. Codefendant Williams was also interviewed following his arrest. Williams stated he did not have anything to do with the cocaine, only that he brought the man with the cocaine after someone else requested (Williams) do so. Williams stated the man he and Wilson picked up in Charlotte was Cradle. Williams further stated that at the time he ran from the officers, he had three bags of cocaine which he tried to conceal in the leaf pile before being apprehended. Law enforcement officers researched this leaf pile and located the third bag of cocaine.

14. On May 7, 1990, Jerry B. Thomas, of the North Carolina State Bureau of Investigation (SBI) analyzed the cocaine base involved in this offense. This analysis revealed the cocaine base to have a total weight of 139.77 grams.

#### Adjustment for Obstruction of Justice

15. The probation officer has no information that the defendant impeded or obstructed justice.

#### Adjustment for Acceptance of Responsibility

16. The probation officer has no information that indicates the defendant has freely admitted his total involvement in this instant offense.

#### Offense Level Computation

17. All counts in the indictment are grouped together pursuant to Section 3D1.2(d), that being the offense level is determined on the quantity of the substance involved.

18. Base Offense Level: The guideline for a 21 U.S.C. section 846 offense is Section 2D1.4 of the Guidelines. The guideline for a 21 U.S.C. section 841 offense is found in Section 2D1.1 of the Guidelines. These sections provide that offenses involving conspiracy to manufacture, possess, or trafficking in a controlled substance has a based offense level as determined by

2D1.1(a)(3). This offense involved 139.77 grams of cocaine base. The base offense level is therefore set at 32. Section 2D1.1(a)(3)(c)(6).

- |     |  |   |           |
|-----|--|---|-----------|
| 19. | Adjustment for Role in Offense:              | None  | <u>0</u>  |
| 20. | Victim Related Adjustment:                   | None  | <u>0</u>  |
| 21. | Adjustment for Obstruction of Justice:       | None  | <u>0</u>  |
| 22. | Adjusted Offense Level (Subtotal):           |   | <u>32</u> |
| 23. | Adjustment for Acceptance of Responsibility: | The defendant has not clearly demonstrated a recognition and an affirmative acceptance of his personal responsibility for his criminal conduct. Therefore, there is no adjustment to the offense level. | <u>0</u>  |
| 24. | Total Offense Level:                         |   | <u>32</u> |

#### PART B. THE DEFENDANT'S CRIMINAL HISTORY

##### Juvenile Adjudication

25. None

##### Criminal Convictions

	<u>Date of Arrest</u>	<u>Charge/Agency</u>	<u>Date Sentence Imposed/Disposition</u>	<u>Guideline Score</u>
26.	5-13-87 (Age 25)	Criminal Possession of Controlled Substance, Class C Felony Supreme Court Brooklyn, NY	12-8-87: Sentenced 1 day imprisonment 5 yrs prob	4A1.1(c)

On May 13, 1987, in Brooklyn, New York, the defendant was arrested after complainant Valereia Lutz, claimed he had robbed her. At the time of his arrest, Cradle was searched and 37 vials of "crack" was found in his pants' pocket. Laboratory reports indicated that the 37 vials each contained cocaine and had a weight of 1/8 ounce plus 21.1 grains.

Criminal History Computation

27. The criminal conviction above results in a subtotal criminal history score of 1.
28. At the time the instant offense was committed, the defendant was on probation for the sentence of December 8, 1987. Pursuant to Section 4A1.1(d), 2 points are added.
29. The total criminal history points is 3. According to the Sentencing Table (Chapter 5, Part A) 2 to 3 criminal history points establishes a criminal history category of II.

PART C. SENTENCING OPTIONS

Custody

30. Statutory Provisions: The maximum term of imprisonment as to each count of the Bill of Indictment is life. Title 21 U.S.C. section 841(a)(1).
31. Guideline Provisions: Based on a total offense of 32 and a criminal history category of II, the Guidelines Imprisonment Range is 135 to 168 months. However, Section 5G1.1(b) sets these statutorily required minimum sentence as the guideline sentence, that being 20 years.

Supervised Release

32. Statutory Provisions: A term of supervised release of at least 10 years also must be imposed. Title 21 U.S.C. section 841(a)(1).
33. Guideline Provisions: The guideline range for a term of supervised release is 10 years under Section 5D1.2(a).

Probation

34. Statutory Provisions: Because the instant offense is a Class A Felony, the defendant is ineligible for probation, pursuant to Title 18 U.S.C. section 3561(a)(1).
35. Guideline Provisions: Pursuant to Section 5B1.1(b)(1), the defendant is ineligible for probation.

## PART D. OFFENDER CHARACTERISTICS

Family Ties, Family Responsibilities, and Community Ties

36. Mario Lenardo Cradle was born on April 23, 1962, in Brooklyn, New York, to Robert and Edna McGee Cradle. His father is a high school graduate and owns his own business. The defendant's mother is a high school graduate also and works in the family business. The defendant reports he was reared in a family consisting of three sisters and four brothers. A Presentence Report prepared for the New York State Court lists the defendant's siblings as: Calvin, Bernard, Arthur, Carlton, Joyce Harris, Norma Jamison, and Sara Cradle. This New York Presentence Report also reports that the defendant's brother Phillip was shot to death in 1978, at the age of 20 years old; Robert Cradle died of meningitis as a child.
37. The defendant is single, and reports to be the father of a two-year-old daughter, Daria, who lives with her mother.
38. On June 22, 1990, at this defendant's initial interview by the United States Probation Officer, Asheville, North Carolina, Cradle reported to have been living for the past 18 years in the home of his parents at 719 Alabama Avenue, Brooklyn, New York. Edna Cradle informed a probation officer of the Eastern District of New York, who visited her at her residence, that Cradle last lived at the family address approximately five years ago. She further stated that since that time, he has only sporadically spent the night with the family.

Mental and Emotional Health

39. According to the defendant, he has never suffered from any mental or emotional problems that would require professional intervention.

Physical Condition, Including Drug Dependence and Alcohol Abuse

40. Cradle is a black male, 5'5" tall, and weighs 170 pounds with black hair and black eyes. The defendant reports he is in good general health and denies any history of health problems. He further denies ever using illegal drugs and reports never to have had a problem with alcohol abuse.

Education and Vocational Skills

41. The defendant reports he dropped out of Jefferson High School, Brooklyn, New York, after completing the eleventh grade. A transcript from the school indicates Cradle repeated the tenth grade in 1980 before dropping out during October 1980, at the age of 17 (verified).
42. This defendant reports no other formal school or vocational training.

Employment Record

43. According to the defendant, since dropping out of high school, he has worked for the family business, S.B.C. Boiler Company, as a truck driver, earning approximately \$500 per week. Mrs. Edna Cradle verified this defendant did work consistently for the family business until January of 1990.

**PART E. FINES AND RESTITUTION**

Statutory Provisions

44. As to each count, the maximum fine is \$8,000,000. Title 21 U.S.C. section 841(a)(1).
45. As to each count, a special assessment of \$50 is mandatory. Title 18 U.S.C. section 3013.
46. The Victim and Witness Protection Act does not apply to Title 21 offenses.

Guideline Provisions

47. As to each count, the fine range for this instant offense is a fine amount up to the maximum authorized by the statute. 5E1.2(c)(4).
48. Subject to the defendant's ability, the Court shall impose an additional fine amount that is at least sufficient to pay the cost to the government of any imprisonment, or supervised release ordered. Section 5E4.2(i). The most recent advisory from the Administrative Office of the United States Courts, dated April 30, 1990, suggests that a monthly cost of \$1,415.56 be used for imprisonment and a monthly cost of \$96.66 for supervision.

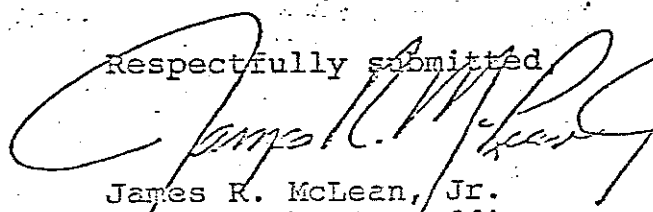
Defendant's Ability to Pay

49. This defendant reports he has no significant assets and reports the following liabilities: Bank of New York, \$1,200 payable at \$100 per month; AGMC for a truck for which he owes \$2,000 and makes a monthly payment of \$200.
50. This defendant has been detained since his initial arrest in April of 1990. He has no known income; therefore, he appears to be unable to pay a fine.

PART F. FACTORS THAT MAY WARRANT DEPARTURE

51. The probation officer has not identified any information that would warrant a departure from the guidelines.

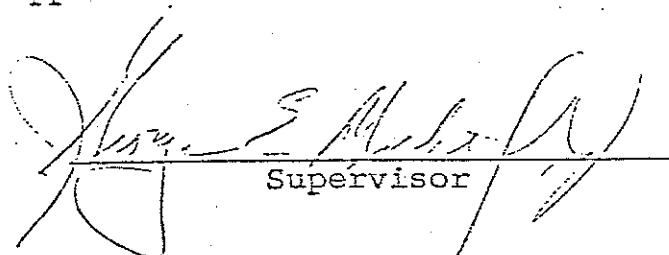
Respectfully submitted,

  
James R. McLean, Jr.  
U. S. Probation Officer

JRMJr:jws

Reviewed and Approved:

9-18-90  
Date

  
Supervisor

**EXHIBIT "E"**

PO <input type="checkbox"/> 419 Misd <input type="checkbox"/> 419 Felony <input checked="" type="checkbox"/> District	5 1 Off	Assigned 1909 1909 Judge/Magistr	VS CRADLE, MARIO LENA	06/06/90 00017 No of 3 Del's U.S. MAG. CASE NO
U.S. TITLE/SECTION 21: 841(a) (1) 846 21: 841(a) (1) 18: 2 21: 841(a) (1) 18: 2		OFFENSES CHARGED Conspiracy to unlawfully manufacture and possess w/intent to distribute in excess of 50 grams of cocaine base, a Sch. II narcotic controlled substance Ct. 1 Manufacturing in excess of 50 grams of cocaine base, a Sch. II narcotic controlled substance & aiding & abetting Ct. 2 Possessing w/intent to distribute in excess of 50 grams of cocaine base, a Sch. II narcotic controlled substance & aiding & abetting Ct. 3		ORIGINAL COUNTS 1 1 1
SUPERSEDING COUNTS				
INTERVAL ONE KEY DATE: 6-6-90 EARLIEST OF: arrest, sum'ns, custody, appear-on complaint APPLICABLE: <input checked="" type="checkbox"/> indictment filed/unseal, <input checked="" type="checkbox"/> comment to Magr. trial on complaint, <input type="checkbox"/> information, <input type="checkbox"/> felony waiver				
END ONE AND/OR BEGIN TWO (OR RESTART PERIOD TO TRIAL) KEY DATE: 6-22-90 a) <input checked="" type="checkbox"/> 1st appears on pending charge / R40 b) <input type="checkbox"/> Receive file R20/21 c) <input type="checkbox"/> Supdg. <input type="checkbox"/> Indict <input type="checkbox"/> Inf d) <input type="checkbox"/> Order New trial e) <input type="checkbox"/> Remand f) <input type="checkbox"/> G/P Withdrawn				
END INTERVAL TWO KEY DATE: 8-22-90 DISMISS: <input type="checkbox"/> Dismiss, <input checked="" type="checkbox"/> Pled guilty, <input type="checkbox"/> Note, <input type="checkbox"/> Trial (w/ Jury)				
1st appears with or waves counsel ARRAIGNMENT 6-25-90		1st Trial Ended RE-TRIAL		2nd Trial Began DISPOSITION DATE 10-9-90 SENTENCE DATE 10-9-90
FINAL CHARGES DISMISS <input type="checkbox"/> on S.T. grounds <input type="checkbox"/> W.P. <input type="checkbox"/> W				
III. MAGISTRATE Search Warrant: Issued, Return Summons: Issued, Served Arrest Warrant Issued COMPLAINT DATE, INITIAL NO., INITIAL APPEARANCE DATE, PRELIMINARY EXAMINATION, REMOVAL OR HEARING, WAIVED, NOT WAIVED, INTERVENING INDICTMENT, OUTCOME: HELD FOR GJ OR OTHER PCEEDING IN THIS DISTRICT, HELD FOR GJ OR OTHER PCEEDING IN DISTRICT BE				
Show last names and suffix numbers of other defendants on same indictment/information: Williams-2, Wilson-3				
ATTORNEYS U.S. Attorney or Asst. Thomas J. Ashcraft, U. S. Atty., Charles R. Jonas Federal Bldg., 401 W. Trade St., Charlotte, N. C. 28202 (704) 371-6222				
Defense: 1 <input checked="" type="checkbox"/> CJA, 2 <input type="checkbox"/> Ret, 3 <input type="checkbox"/> Waived, 4 <input type="checkbox"/> Self, 5 <input type="checkbox"/> Non / Other, 6 <input type="checkbox"/> PD, 7 <input type="checkbox"/> CD				
Roger T. Smith SS# 245-94-3101 Attorney At Law P. O. Box 7172 Asheville, N. C. 28802 (704) 254-4658				
Mario Lenardo Cradle SS# 117-66-5566 c/o Buncombe Co. Jail Asheville, N. C. 28801 Address as of 1-20-95 FCI Fort Dix East Fort Dix, NJ 60649				
Address as of 4-15-91 Mario Lenardo Cradle 08253-008 P. O. Box 9000 Seagoville, TX 75159				
GOVERNMENT EXHIBIT E				
FINE AND RESTITUTION PAYMENTS DATE, RECEIPT NUMBER, C.D. NUMBER, DATE, RECEIPT NUMBER, C.D. NUMBER				

DATE DOCUMENT NO	90 00017 01	MASTER DOCKET - MULTIPLE DEFENDANT CASE PROCEEDINGS DOCKET FOR SINGLE DEFENDANT	VI EXCLUSION Start Date End Date
V. PROCEEDINGS			
6-6-90	1.	Bill of Indictment	smj
6-11-90	2.	Request For Issuance Of Warrant by U. S. Attorney	smj
6-12-90		Issuing Warrant for Arrest and sending to U. S. Marshal in Charlotte for service. cc: U. S. Atty. & U. S. Magistrate- Asheville & Charlotte file to Clerk's Office in Asheville	smj
6-22-90		Defendant is arrested and brought before Magistrate Davis for Initial Appearance. Defendant requests court appointed counsel and Roger T. Smith is appointed to represent him. AUSA Marshall represents the government. Defendant received a copy of the charging documents and understands the charges. Defendant is returned to the custody of the U. S. Marshal. Detention hearing is scheduled for June 25, 1990 at 8:30 a. m.	smj
6-22-90	3.	Defendant's Election And/Or Waiver of Counsel - requests CAC	smj
6-22-90	4.	Financial Affidavit	smj
6-22-90	5.	Appointment Of And Authority To Pay Court Appointed Counsel Roger T. Smith	smj
6-25-90		Detention Hearing before Magistrate Davis in Asheville. Defendant is present with counsel and AUSA Cogburn represents the government. Government's Motion for Detention is allowed.  Arraignment before Magistrate Davis - defendant is present with counsel and AUSA Cogburn is present for the government. Defendant pleads not guilty and requests a jury trial. Case is continued to the August 1990 Term in Statesville. Defendant is returned to the custody of the U. S. Marshal.	smj
6-25-90	6.	PRETRIAL ORDER (JTD) ordering that all pretrial motions must be in writing and filed within 15 days from this date and motions not timely filed will be summarily denied. cc: copies distributed by Clerk's Office in Asheville	smj
6-26-90	7.	ORDER OF DETENTION PENDING TRIAL (JTD) cc: copies distributed by Clerk's Office in Asheville	smj
6-26-90	8.	Marshal's return on Warrant For Arrest executed on 6-22-90 file rtd.	smj
7-5-90	9.	Defendant's Request For Discovery And Inspection w/cs	smj
7-13-90		file to Magistrate Davis	smj
7-16-90	10.	MEMORANDUM (RLV) informing attorneys of record on the filing of Plea Agreement no later than August 9, 1990 for the August 22, 1990 Term. cc: attys. of record	smj

UNITED STATES DISTRICT COURT  
CRIMINAL DOCKET

U. S. vs

MARIO LENARDO CRADLE

AD 256A

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DATE	PROCEEDINGS (continued)	V. EXCLUD
	(Document No.)	(a) (b)
7-24-90 11.	ORDER (JTD) ordering that defendant's Request for Discovery and Inspection is deemed MOOT.  This Order is entered in response to defendant's Request for Discovery and Inspection (#9). cc: attys. of record file rtd.	
8-9-90 12.	Plea Agreement (copy to U. S. Atty. & U. S. Probation)	
8-15-90 13.	Motion To Continue by defendant w/cs (copy given to Judge's Office by Clerk's Office in Asheville)	
8-22-90	Defendant sworn and present with counsel. Plea changed to guilty as to all 3 counts in the bill of indictment. Rule 11, FRCP, inquiry and findings made and accepted by Court. Factual basis and sentencing are continued to the October 1990 Term.	
10-2-90	Issuing Notice for Factual Basis & Sentencing scheduled for Tuesday, October 9, 1990 at 11:30 A. M. in Asheville before Judge Voorhees cc: deft., attys. of record, USM file to Asheville	
10-9-90	Defendant appeared with counsel for Factual Basis & Sentencing before Judge Voorhees in Asheville. Parties stipulated to Factual Basis stated by AUSA Cogburn. Factual basis for guilty plea found by Court and affirms acceptance of guilty plea as to all 3 counts in the bill of indictment. Enter verdict of guilty.  Sentence of the court: TWENTY (20) YEARS on each of Counts 1, 2 & 3 to run concurrently to each count.  TEN (10) YEARS supervised release on each of Counts 1, 2 & 3 to run concurrently to each count  Conditions of supervised release: 1. Within 72 hrs. of release from prison deft. is to report to the probation office in the district where released. 2. Not commit any local, state or federal crimes. 3. Obey standard conditions of supervised release. 4. Participate in a program of drug and alcohol treatment and testing as directed by probation officer. 5. Not possess a firearm or other dangerous weapon.  Pay an assessment fee of \$150.00	
10-10-90	file rtd.	

UNITED STATES DISTRICT COURT  
CRIMINAL DOCKET

USA vs. MARIO LENARDO CRADLE

AD 256A

DATE	PROCEEDINGS (continued)	V. EXCLUDABLE	
		(a)	(b)
10-17-90 14.	JUDGMENT INCLUDING SENTENCE UNDER THE SENTENCING REFORM ACT (RLV) USA-1, USM-3, USPO-1, Judgment Book-1		smj
10-25-90 15.	MEMORANDUM OF SENTENCING HEARING AND REPORT OF STATEMENT OF REASONS (RLV) cc: USPO-Charlotte & Federal Bureau of Prisons		smj
12-5-90 16.	Marshal's return on Judgment - defendant is delivered on 11-27-90 to FCI, Seagoville, Texas		smj
1-22-91 17.	Appointment Of And Authority To Pay Court Appointed Counsel in the amount of \$692.40		smj
1-22-91	Receiving letter from defendant requesting that the letter be treated as a motion for leave to file late appeal. (sending copy of letter & docket sheets to Judge Mullen)		smj
4-15-91 18.	Letter from defendant to the court reporter treated as a motion for the court to furnish transcripts of his court proceedings to him at government's expense Application To Proceed In Forma Pauperis attached file to Magistrate Taylor		smj
4-18-91 19.	ORDER (PBT) ordering that Defendant's motion to produce the sentencing transcripts at Government expense be, and the same is DENIED WITHOUT PREJUDICE.  The Clerk is directed to certify copies of this Order to Defendant and the United States Attorney.  cc: defendant USA file received		mer
4-25-91 20.	Motion For Court Proceedings Transcripts At Government Expense (file to Magistrate Taylor)		smj
5-22-91 21.	ORDER (RLV) ordering that Defendant's motion to produce the Rule 11 and sentencing transcripts at Government expense be, and hereby is, DENIED WITHOUT PREJUDICE. cc: deft. & cnsl file rtd.		smj
4-9-92 22.	Transcript of Guilty Plea before Judge Richard L. Voorhees on 8-22-90		smj
4-9-92 23.	Transcript of Sentencing before Judge Richard L. Voorhees on 10-9-90		

UNITED STATES DISTRICT COURT  
CRIMINAL DOCKET

U. S. vs

MARIO LENARDO CRADLE

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DATE	PROCEEDINGS (continued)	V. EXCLUD (a)   (b)
1-20-95	24. Appellant, Filing Notice Of Appeal Of Sentencing Conviction	
1-20-95	25. Appellant, Filing Notice For Transcripts Of Appellant Plea Hearing And Sentencing Hearing	
1-24-95	Sending Transmittal Sheet and copies of Notice of Appeal docket sheets & Judgment Including Sentence Under The Sentencing Reform Act to Clerk, U. S. Court of Appeals (also sending copy of Notice for Transcripts to Clerk, U. S. Court of Appeals) copy of Transmittal Sheet, docketing statement, & Notice of Appeal to deft. & copy of Transmittal Sheet & Notice of Appeal to U. S. Atty.	
2-23-95	file to Clerk in Asheville	SI

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*Exhibit F*

UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF NORTH CAROLINA  
STATESVILLE DIVISION  
DOCKET NO. ST-CR-90-17-1

UNITED STATES OF AMERICA, )  
)  
vs. )  
)  
MARIO LENARDO CRADLE, )  
Defendant. )

AFFIDAVIT

I, ROGER T. SMITH, being first duly sworn, depose and say as follows:

1. In response to Mr. Cradle's argument concerning his plea, based upon an agreement that he would receive a sentence based upon a Level of 32, my response is as follows:

During the negotiations with the Assistant United States Attorney, Max Cogburn, Jr., I calculated Mr. Cradle's potential sentence Base Offense Level being Level 32 with a criminal history category of III, which the Assistant United States Attorney agreed with me about. I also calculated Mr. Cradle's sentence based upon a career offender category. The plea agreement in and of itself does not contain any statement that Mr. Cradle would be sentenced as a Level 32 offender. It is entirely possible that Mr. Cradle entered a plea with the belief that he would be sentenced based upon the sentencing guidelines with a Base Offense Level of 32. However, prior to sentencing, and after receipt of the Pre-Sentence Investigation Report, Mr. Cradle was advised of the mandatory minimum 20-year sentence under the statute and he should have been fully aware that his sentence would be a twenty year sentence on the date of his sentencing.

2. In response to Mr. Cradle's allegation that I was ineffective in representing him because I failed to file a Notice of Appeal, I have no notes, letters, or recollection of Mr. Cradle ever asking me to file a Notice of Appeal on his behalf. The first time that I became aware that Mr. Cradle wanted an appeal of his case was on January 31, 1995, when the United States Court of Appeals for the Fourth Circuit contacted me and advised me that the Defendant had filed his own Notice of Appeal. I did receive a letter from Mr. Cradle on March 11, 1991, in which he asked me for a copy of any post-conviction Motions or Notice of Appeal filed on his behalf. However, the letter did not request that I file a Notice of Appeal. A copy of his letter and my response to his letter are attached and marked as Exhibits 1 and 2, respectively.

FURTHER AFFIANT SAITH NOT; THIS THE 13th day of December, 1995.

*Roger T. Smith*  
Roger T. Smith, Attorney for Defendant  
P.O. Box 7172  
Asheville, NC 28802  
704/254-4658

SWORN TO AND SUBSCRIBED BEFORE ME this the 13th day of December, 1995.

*Mary Ella Read*  
Mary Ella Read, Notary Public  
My Commission Expires: 1-19-99

